

Mr. Chairman and members of the Committee I want to begin by thanking you for the opportunity to appear before you this morning. My name is George Moore and I am the Commonwealth's Attorney for a four county district in Eastern Kentucky. One of my duties and privileges is to work with the General Assembly of Kentucky on issues of concern to prosecutors, and victims of crime. Two years ago the General Assembly passed and Governor Ernie Fletcher signed Senate Bill 86. The Bill was sponsored by Senator Gary Tapp and its intent was to prohibit the knowing manufacture, marketing, or distribution of any product which is intended to defraud an alcohol or drug test. Before continuing I want to express my appreciation to Senator Tapp, Senate Judiciary Chairman Robert Stivers, and House Judiciary Chairman Gross Lindsay for their support and cooperation in consideration of this bill. Senate Bill 86 passed both house of the General Assembly without a single negative vote, showing remarkable bipartisan support.

Some would ask why a bill is needed to address sale of packaged urine and chemical substances that modify the results of urine testing. Published figures suggest that perhaps eight per cent of negative urine tests performed are produced by adulterated samples. While I have no empirical evidence to support my opinion, I suspect the number far exceeds that estimate. Typing the simple phrase "pass the urine test" into any internet search engine produces thousands of "hits" in response. One recent effort on my part yielded 657,000 possible web sites for review.

These web sites provide information on a plethora of chemical and organic substances designed to mask narcotic residue in urine samples provided for testing. For as little as \$29.95 you can obtain a package of urine certified to be free of narcotics along with heat units to keep the sample at body temperature. Many of these sites make a point to claim they are not concerned about preventing reasonable law enforcement, but rather are dedicated to the vigilant protection of cherished constitutional claims of privacy.

Such noble claims fail with very basic consideration of the true conduct being facilitated by the compromise of prudent drug testing. Initially my interest in this topic arose from a growing realization that mandated drug testing of convicted felons on probation in my circuit was simply unreliable. The Court and my office assumed that when Probation and Parole Officers tested probationers we were receiving reliable test results. Anecdotal information continued to come to us that numerous individuals were using substances obtained primarily over the internet to thwart testing. I must confess I was shocked when I first discovered the existence of all kinds of exotic named substances which could be ingested to mask drugs in the test samples. Initial amusement at a Whizzinator and other similarly named devices used to deliver urine into a cup when visual observation was required, gave way to alarm as I came to the realization that there was absolutely no assurance of legitimacy to the monitoring ordered by the Court.

In discussions with law enforcement personnel I came to understand I was just looking at the tip of the ice berg. Interstate 64 runs through my rural Kentucky District. We have a weigh station in Rowan County and more and more drivers of commercial trucks were found to be under the influence of or in possession of controlled substances. It was troubling to learn that the drivers of these trucks carrying tens of thousands of pounds of cargo along highways used by every citizen of my community were also availing themselves of these products, and thereby defeating the drug tests used to insure they were sober while behind the wheel of these big rigs.

Members of law enforcement pointed out to me that men and women entrusted to protect our communities and carry guns were also capable to using the same

substances to conceal narcotics use which could seriously impair their abilities. The list of professions and occupations where employers and government assumed they were being diligent in testing for illegal drug use grew and grew as we pondered this situation.

Senate Bill 86 is not a panacea, but it is a good first step. I must confess I take a good deal of pride when many of the web sites I have now become very familiar with bear a legend at the bottom of the page notifying potential customers that they will not ship to Kentucky and a few other states that have adopted meaningful statutes to control this industry. I would be even more proud to see Congress adopt legislation designed to restore some integrity and confidence to random drug testing programs adopted by Courts and employers. It is not a matter of invading the privacy of innocent citizens, it is a matter of protecting those innocent citizens from danger at the hands of impaired individuals.